

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton, and
Robert G. Taub

Lakeville Post Office
Lakeville, Connecticut

Docket No. A2011-102

ORDER AFFIRMING DETERMINATION

(Issued January 26, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012”.¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly, the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

The Postal Service's Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service's request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On September 30, 2011, Etienne Delessert and Rita Marshall (Petitioners) filed a petition with the Commission seeking review of the Postal Service's Final Determination to consolidate and reclassify the Lakeville, Connecticut post office (Lakeville post office).² The Final Determination to consolidate and convert the Lakeville post office is affirmed.

II. PROCEDURAL HISTORY

On October 5, 2011, the Commission established Docket No. A2011-102 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.³

On October 17, 2011, the Postal Service filed the Administrative Record with the Commission.⁴ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁵

² Petition for Review received from Etienne Delessert and Rita Marshall regarding the Lakeville, Connecticut post office 06039, September 30, 2011 (Petition).

³ Order No. 895, Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 5, 2011.

⁴ The Administrative Record is attached to the United States Postal Service Notice of Filing, October 17, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Consolidate the Lakeville, CT Post Office and Continue to Provide a Classified Branch (Final Determination). Subsequently, the Postal Service submitted a complete and corrected Final Determination. United States Postal Service Notice of Filing Corrected Administrative Record–Errata, December 19, 2011.

⁵ United States Postal Service Comments Regarding Appeal, December 19, 2011 (Postal Service Comments).

Petitioners filed an initial brief supporting their petition on December 7, 2011.⁶

III. BACKGROUND

The Lakeville post office provides retail postal services and service to 707 post office box customers and 620 delivery customers. Final Determination at 2. The Lakeville post office, an EAS-16 level facility, has retail access hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 12:00 p.m. on Saturday. Lobby access hours are 7:30 a.m. to 5:50 p.m., Monday to Friday, and 7:30 a.m. to 3:00 p.m. on Saturday. *Id.*

The postmaster position became vacant on January 30, 2010 when the Lakeville postmaster retired. An officer-in-charge (OIC) was installed to operate the post office. *Id.* at 2. Retail transactions average 268 transactions daily (351 minutes of retail workload). Post office receipts for the last 3 years were \$335,327 in FY 2008; \$328,665 in FY 2009; and \$323,982 in FY 2010. There are 12 permit or postage meter customers. By consolidating and converting the Lakeville post office, the Postal Service anticipates savings of \$55,816 annually. *Id.* at 85.

After consolidation and conversion, retail services will continue to be provided by the Lakeville branch, except for permit mail acceptance and postage meter settings. *Id.* at 2. Delivery service will be provided by the Salisbury post office, located approximately 1.4 miles away.⁷ Retail service will also be available at the Salisbury post office. Administrative oversight for the Lakeville branch will shift to the Salisbury post office. The Salisbury post office is an EAS-16 level post office, with retail hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 12:00 p.m. on

⁶ Petitioners' Initial Brief, December 7, 2011 (Initial Brief). On November 9, 2011, Petitioners filed a Motion Requesting Extension of Time to file their Initial Brief or Participant Statement. The motion was granted by Commission Order No. 965, Order Granting Motion for Extension of Time, November 14, 2011.

⁷ MapQuest estimates the driving distance between the Lakeville and Salisbury post offices to be approximately 1.5 miles (3 minutes driving time).

Saturday. *Id.* Ninety-eight (98) post office boxes are available. The Postal Service will continue to use the Lakeville name and ZIP Code. *Id.* Concern No. 1.

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioners oppose the consolidation and conversion of the Lakeville post office. Petitioners object to the fact that they could not review and compare information about the performance of all area post offices. Initial Brief at 2. Petitioners also state it was not clear what criteria were used to determine to convert the Lakeville post office since the nearby Salisbury post office has only one delivery route and 500 post office boxes, while the Lakeville post office has two delivery routes and 900 post office boxes. *Id.*

Petitioners are particularly concerned that conversion means that a public hearing will not be required to close the Lakeville branch in the future.⁸ Petitioners are concerned that the notice and comment procedure extended to the discontinuance of stations and branches, as noted in the Postal Service's letter on October 4, 2011 to Representative Christopher S. Murphy (attached to Initial Brief), is merely a "policy decision" that could be reversed at any time. *Id.* Petitioners conclude that placing the burden of proof on citizens to show the Postal Service failed to consider certain required issues, or that facts relied upon by the Postal Service are not valid is flawed since the citizens were denied access to relevant information regarding the operations of area post offices. *Id.* at 3.

Postal Service. The Postal Service argues that the Commission should affirm its determination to consolidate and convert the Lakeville post office. Postal Service Comments at 1. The Postal Service believes the appeal raises four main issues: (1) the effect on postal services; (2) the impact on the Lakeville community; (3) economic savings; and (4) other matters. *Id.* at 1-2. The Postal Service asserts that

⁸ The Commission has held that a postal station or branch is a "post office," and thus afforded the right to appeal a closure. See, e.g., Docket No. A82-10, *In re Oceana Station, Virginia Beach, Virginia*, Order No. 436, June 25, 1982 (Oceana Station).

it has given these and other statutory issues serious consideration and concludes that the determination to consolidate the Lakeville post office and convert it into a classified branch should be affirmed. *Id.* at 11-12.

The Postal Service explains that its decision to convert the Lakeville post office into a classified branch was based on several factors, including:

- the postmaster vacancy;
- the variety of delivery and retail options;
- very little recent growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 4-5. The Postal Service contends that it will continue to provide regular and effective postal services to the Lakeville community through the Lakeville Branch when the Final Determination is implemented. *Id.* at 5.

The Postal Service also asserts that it has addressed the concerns raised by Petitioners regarding the effect on postal services, effect on the Lakeville community, economic savings, effect on postal employees and other contentions. *Id.* at 5-11.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal

Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close or consolidate any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure or consolidation date to ensure that patrons have an opportunity to present their views regarding the closing or consolidation. The Postal Service may not take any action to close or consolidate a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close or consolidate a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The Administrative Record indicates the Postal Service took the following steps in reaching its Final Determination. On March 31, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in classification and service at the Lakeville post office. *Id.* at 2. A total of 1600 questionnaires were distributed and 467 were returned. On April 21, 2011, the Postal Service held a community meeting at Salisbury Town Hall to address customer concerns. Seventy-three (73) customers attended. *Id.*

The Postal Service posted the proposal to consolidate the Lakeville post office with an invitation for comments at the Lakeville and Salisbury post offices from June 6, 2011 through August 7, 2011. *Id.* The Final Determination was posted at the same two post offices from August 27, 2011 through September 28, 2011. *Id.* at 1; Postal Service Comments at 4.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close or consolidate a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal services will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. Lakeville, Connecticut is an unincorporated community located in Litchfield County, Connecticut. Administrative Record, Item No.16. The community is administered politically by the town of Salisbury. Police protection is provided by the Connecticut State Police. Fire protection is provided by the Lakeville Hose Company. The community is comprised of affluent retirees, self-employed individuals, entertainers, and those who commute to work in nearby communities and work for local businesses. *Id.* Residents may travel to nearby communities for other supplies and services. *See generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Lakeville community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to consolidate the Lakeville post office, customers raised concerns regarding the effect of the change in classification on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. *Id.* at 2-84.

Many of the comments indicate that customers misunderstood the consolidation as a closure of the Lakeville post office. The Postal Service informed customers in follow-up letters that the decision was to convert the Lakeville post office from an independent post office to a classified branch of the Salisbury post office. The Postal Service further explained this meant no change of address would be necessary for customers and, furthermore, a local postal presence in the Lakeville community would

remain. Retail and Post Office Box service will still be available at the Lakeville post office (classified branch).

The Postal Service has adequately considered the effect of the Lakeville post office consolidation and conversion on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Lakeville postmaster retired on January 30, 2010 and that an OIC has operated the Lakeville post office since then. Postal Service Comments at 2; Final Determination at 2. It asserts that after the Final Determination is implemented, the Lakeville post office will continue to operate as a classified branch, with career postal employees providing the same services as a post office, except for postage meter setting and acceptance of permit mail. *Id.*

The Postal Service has considered the possible effects of the post office consolidation and conversion on the OIC and has satisfied its obligation to consider the effect of the consolidation and conversion on employees at the Lakeville post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the conversion will have on postal services provided to Lakeville customers. Postal Service Comments at 5. It asserts that customers of the converted Lakeville branch may continue to obtain retail services at the Lakeville branch, except for permit mail acceptance and postage meter settings. *Id.* The Postal Service notes those services can be obtained at the Salisbury post office located 1.4 miles away. Final Determination at 2. Delivery service will be provided by the Salisbury post office. Postal Service Comments at 6.

There is some concern that, as a classified branch, the facility could be closed more readily in the future than a post office could be closed. Initial Brief at 2; Final Determination at 84, Concern No. 117. The Postal Service has taken the position that a branch office closing is not subject to appeal to this Commission. The Commission continues to contend a branch office closing is subject to appeal to the Commission. In any event, the Postal Service's new rules for facility closings, effective July 14, 2011,

apply to branches as well as post offices, and the Postal Service will allow appeals to the Commission of branch closings to proceed to decision.⁹ Procedures are therefore available to customers to protect against future arbitrary closing of this classified branch office.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$55,816. Final Determination at 85. It derives this figure by summing the postmaster salary and benefits. *Id.*

The Commission has previously stated that the Postal Service should not compute savings based on compensation costs unless there is a reasonable assurance that closing will actually eliminate those costs. The Lakeville post office postmaster retired on January 30, 2010. *Id.* at 2. The post office has since been staffed by a career OIC. Based on a review of the Administrative Record, the Commission concludes that the Postal Service has reviewed the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

VI. CONCLUSION

The Postal Service has adequately considered all requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to consolidate and convert the Lakeville post office is affirmed.

⁹ 39 CFR 241.3(a)(1). See 76 FR 41414-5.

It is ordered:

The Postal Service's determination to consolidate and convert the Lakeville, Connecticut post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Lakeville, Connecticut post office has been operated by an officer-in-charge (OIC) since the former postmaster retired on January 30, 2010. The Postal Service argues that the savings should be calculated using a full-time position. Since an OIC is working at the facility and that person or someone with a closely comparable salary will continue to work there, any savings are illusory.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation has already been included in those billions. There are inherent and blatant contradictions in the record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

Ruth Y. Goldway